Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 6

(T.D. 83-192)

Private Aircraft Arriving in the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by extending to the Pacific, Gulf of Mexico, and Atlantic Coasts, the area of entry from which private aircraft arriving in the United States must furnish a notice of intended arrival to Customs. The amendments, which were previously published on an interim basis, further provide that the aircraft required to furnish such notice must land for Customs processing at the *nearest* designated airport to the point of crossing the United States border or coastline. Prior to the interim change, the regulation provided for a notice of intended arrival only for private aircraft arriving in the United States via the U.S./Mexican border, and provided for landing at any of several designated airports.

The amendments are necessary because of the severity of the drug abuse problem, the major increase in illegal drug importations and the need for immediate action to expand the effectiveness of drug smuggling enforcement.

EFFECTIVE DATE: September 15, 1983. The interim regulation, published as T.D. 82-52 in the Federal Register on March 24, 1982 (47 FR 12620), and amplified by T.D. 82-88, published in the Federal Register on May 6, 1982 (47 FR 19517), will remain in effect until this final rule takes effect.

FOR FURTHER INFORMATION CONTACT: C. Duane Oveson, Office of Passenger Enforcement and Facilitation, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5607).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The National Narcotics Intelligence Consumers Committee has documented that the supply of illegal drugs to the United States market and the subsequent extent of drug abuse has reached monumental proportions. Illegal drugs generated an estimated $80 billion in retail sales in 1980, a 23 percent increase from 1979. The severity of the drug abuse problem, the preponderance of drug users, and the major increases in volumes of illegal drug importations in the United States are indicated by the significant increase in drug-related deaths, medical care, arrests, and seizures.

The smuggler organization has solidified a dominant position in the United States through the penetration of strategic points in the economy. Countries to the south of the United States are major sources of illegal drugs destined for the United States. Smuggling by air is the preferred mode of transportation for low-volume, high-cost narcotics. Private aircraft account for the highest volume and largest individual loads of these drugs. A Stanford Research Institute Study indicates the magnitude of the air smuggling threat at approximately 6,700 flights annually, involving approximately 1,000 private aircraft. Although recent air interdiction activities in the southeastern United States have resulted in many arrests and seizures, an end to the present situation of drug abuse in the United States is not in sight.

In order to address this national problem, it is necessary to take action to expand the effectiveness of smuggling enforcement. In 1975, the Customs Regulations were amended by adding a new section 6.14 (19 CFR 6.14), to provide for a notice of intended arrival for private aircraft arriving in the United States via the United States/Mexican border. Section 6.14 further provided that such private aircraft land at any one of 14 designated airports along the United States/Mexican border.

Because of the magnitude of the drug problem, and in direct response to Executive and Congressional directives, by an interim regulation published as T.D. 82–52 in the Federal Register on March 24, 1982 (47 FR 12620), effective April 1, 1982, the notice requirement was extended to private aircraft arriving in the United States via the Gulf of Mexico and Atlantic Coasts. The interim regulation further provided that the aircraft required to furnish such notice must land at the *nearest* designated airport to the United States border or coastline crossing point. The list of designated airports also was expanded.

By T.D. 82–88, published in the Federal Register on May 6, 1982 (47 FR 19517), two additional airports were added to the list of designated airports in section 6.14.

Pursuant to T.D. 82–52, interested parties were given until May 24, 1982, to submit comments on the interim regulation.

DISCUSSION OF COMMENTS

Numerous public comments were received in response to T.D. 82-52. The comments are generally supportive of Customs goal to expand the effectiveness of drug smuggling enforcement. The primary concerns expressed were the manner of imposition of the interim regulation, the airports which were designated in section 6.14(g), and the effect of the regulation upon local businesses and individuals.

Several commenters criticize the manner of imposition of the interim regulation. It is contended that insufficient notice was provided to the public before the regulation took effect, that there was no consultation with interested parties prior to issuance, and that the document did not comply with the provisions of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

Customs acknowledges that the public had minimal notice prior to the effective date of the interim regulation. However, as stated in T.D. 82-52, in order to address the national drug smuggling problem, it was necessary for Customs to take immediate action to expand the effectiveness of its smuggling enforcement. The changes to section 6.14 were made in direct response to Executive and Congressional directives. The amendments provide Customs with positive entry control to increase enforcement capability by identifying private aircraft which may be involved in smuggling activity. T.D. 82-52 also stated that, because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for immediate action, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure were impracticable, unecessary, and contrary to the public interest. Pursuant to 5 U.S.C. 553(d)(3), a delayed effective date was dispensed with. T.D. 82-52 solicited public comments, and those comments have been carefully considered in the formulation of the final rule.

A number of comments address the designation of airports in section 6.14(g). Most of these comments state the need for designation of additional individual airports. One urges the designation of 10 additional airports. The comments are concerned with the effect of the landing requirement in section 6.14(d) on individual aircraft and on local businesses located at non-designated airports.

Customs has determined that the New Orleans Lakefront Airport in New Orleans, Louisiana, will be added to the list of designated airports. This addition is being made because of congestion at the other nearby designated airport, New Orleans International Airport (Moisant Field), and because of the ease with which Customs service may be provided to New Orleans Lakefront Airport.

No other additions will be made to the list of designated airports. We believe that the purpose of amending section 6.14, to expand the effectiveness of drug smuggling enforcement, is best served by the designated airports listed in the interim regulation, with the addition of New Orleans Lakefront Airport. Additional designated

airports will not assist Customs goals of the collection of air intelligence and the identification of smuggler aircraft. Furthermore, Customs does not believe that the flow of air traffic makes the designation of additional airports necessary. In individual cases where the landing requirement would result in undue hardship, an exemption from the landing requirement may be requested pursuant to section 6.14(f).

One comment states that the interim regulation is technically inadequate, and suggests certain changes.

Changes to Interim Regulation

After consideration of the comments and further review of T.D. 82-52, several changes have been made in the final rule.

The scope of section 6.14(a) has been expanded to include the Pacific Coast. This change is consistent with the intent of amending section 6.14, and the change makes paragraph (a) parallel paragraph (b), which pertains to the Gulf and Atlantic Coasts. It is not believed that this addition will have a major impact upon private aircraft since most private aircraft subject to section 6.14(a) will enter the United States via the Mexican border. As a result of the inclusion of the Pacific Coast within the scope of section 6.14(a), the words of the interim regulation "and between 97 degrees and 120 degrees west longitude," which were intended to modify the crossing point into the United States, are inappropriate, and have been deleted.

In section 6.14(b), the departing area for private aircraft which must report has been changed from "a foreign place in the Western Hemisphere south of 31 degrees north latitude" to "a foreign place in the Western Hemisphere south of 30 degrees north latitude or from any place in Mexico." This change has been made to have section 6.14 conform with the Federal Aviation Administration regulations with respect to flight plan filing (Part 199, Federal Aviation Regulations (14 CFR Part 199)). The words "or from any place in Mexico" have been added because there are points in Mexico above 30 degrees north latitude, and it is intended that all private aircraft departing from Mexico be subject to section 6.14. The statement in T.D. 82-52 that notice may occur anytime while the aircraft is within the Gulf of Mexico Coastal or Atlantic Coastal ADIZ has been eliminated because it was unnecessary.

Section 6.14(c)(7) has been changed to reflect the landing requirement of section 6.14(d).

Several changes have been made to section 6.14(f). In the second sentence as it was published in T.D. 82-52 (the third sentence in the final rule), the word "desired" has been substituted for the word "required." A sentence has been added to section 6.14(f)(1) stating that approval of an exemption from the landing requirement of section 6.14(d) is at the discretion of Customs. This is not a substantive change, but has been inserted for clarification. Also,

section 6.14(f)(1) has been revised to require additional information in a request for an exemption from the landing requirement. A new section 6.14(f)(2) has been added to cover the reporting requirement when a private aircraft has been granted an exemption from the landing requirement and the aircraft is crossing into the United States over a point on the Pacific Coast north of 33 degrees north latitude, or over a point on the Gulf or Atlantic Coasts north of 30 degrees north latitude. A new section 6.14(f)(3) has been added to state that the owner or aircraft commander of a private aircraft granted an exemption from the landing requirement must notify Customs upon the sale of the aircraft, change in registration number, or change in authorized pilot or crewmembers. That section has also been amended to state that one pilot or crewmember as identified in paragraph (f)(1)(v) must be present on every flight to maintain exemption status.

In section 6.14(g), the New Orleans Lakefront Airport in New Orleans, Louisiana, has been added to the list of designated airports.

In addition, several minor, non-substantive changes have been made for the purpose of clarity.

Executive Order 12291

This amendment is not a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 requires that Customs must inform the public why it is collecting this information, how it will use it, and whether it must be given to Customs. Customs requires the information in order to carry out the laws and regulations which it administers. This regulation applies to private aircraft arriving in the United States via the U.S./Mexican border or the Atlantic, Pacific and Gulf coasts, and it relates to the processing of the aircraft and its passengers. The information is used for arranging appropriate Customs services for arrival inspection processing and enhanced enforcement entry control for effective violator interdiction. The requirements are mandatory but the regulation provides a means for requesting an exemption from the landing requirement. The granting of the exemption is at the authority of Customs. Pursuant to the Paperwork Reduction Act of 1980, the Office of Management and Budget has assigned control number 1515–0098 to the reporting requirements contained in this document.

Regulatory Flexibility Act

It is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have

a significant economic impact on a substantial number of small entities. The rule's provision for exemption from the landing requirement will serve to sufficiently lessen any significant economic impact or burden on small entities that would otherwise occur. Although the rule will have an economic impact on owners of small aircraft that are not able to obtain an exemption from the landing requirement, as well as on fixed base operators at airports that are not designated airports under the rule, Customs believes that, overall, there will not be a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 6

Customs duties and inspection, Imports, Air transportation, Aircraft, Airports.

Amendments to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended as set forth below.

William von Raab,
Commissioner of Customs.

Approved: May 26, 1983.
John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, September 15, 1983 (48 FR 41381)]

PART 6—AIR COMMERCE REGULATIONS

Section 6.14 is revised to read as follows:

§ 6.14 Private aircraft arriving from areas south of the United States.

(a) *Advance report of penetration of United States airspace via United States/Mexican border or Pacific Coast.* All private aircraft arriving in the United States via the United States/Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude shall furnish a notice of intended arrival to the Customs Service at the *nearest* designated airport to point of crossing listed in paragraph (g) of this section for first landing in the United States. The notice must be furnished at least 15 minutes before crossing the United States

border or coastline. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs.

(b) *Advance report of penetration of United States airspace via Gulf and Atlantic Coasts.* All private aircraft arriving in the United States via the Gulf of Mexico or Atlantic Coasts from a foreign place in the Western Hemisphere south of 30 degrees north latitude or from any place in Mexico shall furnish a notice of intended arrival to the Customs Service at the *nearest* designated airport to point of crossing listed in paragraph (g) of this section for first landing in the United States. The notice must be furnished at least 15 minutes before crossing the United States coastline. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs.

(c) *Notice to Customs.* The notice to Customs required by paragraphs (a) and (b) of this section shall include the following:

(1) Aircraft registration number;

(2) Name of aircraft commander;

(3) Number of United States citizen passengers;

(4) Number of alien passengers;

(5) Place of last departure (foreign);

(6) Estimated time and location of crossing United States border/coastline;

(7) Name of United States airport of first landing (designated airport listed in paragraph (g) of this section *nearest* to point of crossing unless an exemption has been granted in accordance with paragraph (f) of this section); and

(8) Estimated time of arrival.

(d) *Landing requirement.* Private aircraft required to furnish a notice of intended arrival in compliance with paragraphs (a), (b), and (c) of this section shall land for Customs processing at the *nearest* designated airport to the border or coastline crossing point as listed in paragraph (g) of this section, unless exempted from this requirement in accordance with paragraph (f) of this section. In addition to the requirements of this paragraph, private aircraft commanders must comply with all other landing and notice of arrival requirements.

(e) *Private aircraft defined.* For the purpose of this section, "private aircraft" means any aircraft other than an aircraft engaged in the transportation of passengers or cargo, or both, for hire.

(f) *Exemption from the landing requirement.* (1) The owner or aircraft commander of a private aircraft required to furnish a notice of intended arrival in compliance with paragraphs (a), (b), and (c) of this section may request an exemption from the landing requirement specified in paragraph (d) of this section. Approval of the request and granting of authority to be exempted from the landing requirement specified in paragraph (d) are at the discretion of the

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district director of Customs. The request shall be submitted to the district director in charge of the airport at which Customs processing is desired and shall be submitted at least 30 days before the anticipated first arrival if the request is for an exemption covering a number of flights over a period of 1 year, or at least 15 days before the anticipated arrival if the request is for a single flight. The request shall include the following information:

(i) Aircraft registration number;

(ii) Aircraft identity (make, model number, color, and type, such as turboprop, turbojet, reciprocating, helicopter, etc.);

(iii) Whether aircraft is transponder-equipped (yes or no);

(iv) Name, address, and date of birth of owner(s) of the aircraft (if the aircraft is being operated pursuant to a lease, the name, address, and date of birth of the lessee, in addition to that of the owner);

(v) Names, addresses, and dates of birth of usual or anticipated pilots and crewmembers;

(vi) Names, addresses, and dates of birth of usual or anticipated passengers, to the extent possible;

(vii) Description of usual or anticipated baggage or cargo;

(viii) Description of company's usual business activity, if aircraft is company-owned;

(ix) Name of airport(s) of intended first landing in the United States;

(x) Foreign place or places from which flight(s) will usually originate; and

(xi) Reason for request for overflight exemption.

(2) If a private aircraft is granted an exemption from the landing requirement specified in paragraph (d) of this section, and if the aircraft is crossing into the United States over a point on the Pacific Coast north of 33 degrees north latitude, the aircraft must furnish notice to Customs in accordance with paragraph (c) of this section at least 15 minutes before crossing 33 degrees north latitude. Similarly, if a private aircraft is granted an exemption from the landing requirement specified in paragraph (d) of this section, and if the aircraft is crossing into the United States over a point on the Gulf or Atlantic Coasts north of 30 degrees north latitude, the aircraft must furnish notice to Customs in accordance with paragraph (c) of this section at least 15 minutes before crossing 30 degrees north latitude. The notice shall be given to a designated airport specified in paragraph (g) of this section. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to paragraphs (a) and (b) of this section is unnecessary.

(3) The owner or aircraft commander of a private aircraft granted an exemption from the landing requirement must:

(i) Notify Customs of a change of Federal Aviation Administration registration number for the aircraft;

(ii) Notify Customs of the sale of the aircraft; and

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers, as specified in paragraph (f)(1)(v) of this section. One pilot or crewmember as identified in paragraph (f)(1)(v) of this section must be present on every flight to maintain exemption status. The notifications specified in this paragraph must be given to Customs within 5 working days of the change or sale, or before a flight for which there is an exemption, whichever occurs earlier.

(g) *Designated airports.*

Location	Name
Beaumont, Tex	Jefferson County Airport
Brownsville, Tex	Brownsville International Airport
Calexico, Calif	Calexico International Airport
Corpus Christi, Tex	Corpus Christi International Airport
Del Rio, Tex	Del Rio International Airport
Douglas, Ariz	Bisbee-Douglas International Airport
Eagle Pass, Tex	Eagle Pass Municipal Airport
El Paso, Tex	El Paso International Airport
Fort Lauderdale, Fla	Fort Lauderdale Executive Airport
Fort Lauderdale, Fla	Fort Lauderdale-Hollywood International Airport
Fort Pierce, Fla	St. Lucie County Airport
Houston, Tex	William P. Hobby Airport
Key West, Fla	Key West International Airport
Laredo, Tex	Laredo International Airport
McAllen, Tex	Miller International Airport
Miami, Fla	Miami International Airport
Miami, Fla	Opa-Locka Airport
New Orleans, La	New Orleans International Airport (Moisant Field)
New Orleans, La	New Orleans Lakefront Airport
Nogales, Ariz	Nogales International Airport
Presidio, Tex	Presidio-Lely International Airport
San Diego, Calif	Brown Field
San Diego, Calif	San Diego International Airport (Lindbergh Field)
Tampa, Fla	Tampa International Airport
Tucson, Ariz	Tucson International Airport
West Palm Beach, Fla.	Palm Beach International Airport
Yuma, Ariz	Yuma International Airport

(R.S. 251, as amended, sec 624, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624, 49 U.S.C. 1509))

(T.D. 83-193)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: September 13, 1983.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Air Link Corp, 2626 Wauwatosa Ave, Milwaukee, Wisconsin; air carrier; Washington International Ins. Co..	July 11, 1983	Aug. 29, 1983	Boston, MA $50,000
Badger Freightways, Inc., 2720 North 19th Street, Sheboygan, WI; motor carrier; Washington International Ins. Co.. D 09/12/83	July 7, 1981	Aug. 18, 1981	Milwaukee, WI $25,000
Boncosky Transportation, Inc.; 1301 Industrial Drive, Algonquin, IL; motor carrier; North River Ins. Co..	June 15, 1983	Aug. 30, 1983	Chicago, IL $25,000
Burlington Northern Air Freight, Inc., 9920 La Cienega Blvd., Inglewood, California; freight forwarder; Federal Ins. Co.. (PB 07/26/76) D 07/25/83 [1]	July 26, 1983	July 26, 1983	Los Angeles, CA $50,000
Channel Distribution System, 8711 City Park Loop, Suite 940, Houston, Texas; Motor carrier; Washington International Ins. Co.. (PB 12/31/75) D 11/10/82[2]	Nov. 8, 1982	Nov. 10, 1982	Houston, TX $25,000
D.O.B. Express, Inc., 454 Alverio Street, Roosevelt, Puerto Rico; motor carrier; New Hampshire Ins. Co.. (PB 08/06/71) D 08/05/83[3]	Aug. 3, 1983	Aug. 5, 1983	San Juan, PR $25,000
Wayne Daniel Truck, Inc., P.O. Box 303, Mount Vernon, MO; motor carrier; Northwestern National Ins. Co. of Milwaukee, WI.	June 1, 1983	Aug. 22, 1983	St. Louis, MO $50,000
Distribution Carrier, Inc., 6178 Steubenville Pike, McKees Rocks, PA; motor carrier; The Travelers Indemnity Co..	Dec. 30, 1982	July 28, 1983	Philadelphia, PA $100,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Druss Army & Navy Store, 2310 Market Street, Galveston; Texas; motor carrier; American Indemity Co.. D 05/03/72	Aug. 28, 1963	Aug. 29, 1963	Galveston, TX $10,000
Tom Gourley Trucking Ltd., 19939-35A Avenue, Langely, B.C., Canada; motor carrier; St. Paul Fire & Marine Ins. Co..	Aug. 8, 1983	Aug 8, 1983	Seattle, WA $25,000
Gross Common Carrier, Inc., 660 West Grand Avenue, Wisconsin Rapids, WI; motor carrier; Sentry Indemnity Co..	Aug. 9, 1983	Aug. 26, 1983	Milwaukee, WI $25,000
R.L. Harrison Trucking Co., Inc., 1107 Airlane Drive, P.O. Box 327, Benton, Arizona; motor carrier; Tri-State Ins. Co..	Aug. 2, 1983	Aug. 24, 1983	Cleverland, Ohio $100,00
IMFS, Inc/dba/Interstate Systems, P.O. Box 175, 110 Ionia N.W., Grand Rapids, Michigan; motor carrier; The Travelers Indemnity Company. (PB 04/02/83) D 08/30/83 [4]	Aug. 25, 1983	Aug. 30, 1983	Detroit, MI $50,000
Inter-City Truck Lines (Canada) Inc., 3033 Universal Drive, Mississauga, Ontario, Canada; motor carrier; Transmerica Ins. Co.. (PB 08/02/79) D 08/30/83 [5]	July 14, 1983	Aug. 30, 1983	Detroit, MI $50,000
Interstate Systems—See IMFS, Inc.			
Kal Auto Transport, Inc., 175 Turk Streek, San Francisco, California; motor carrier; St. Paul Fire & Marine Ins. Co.. D 07/05/83	Jan. 18, 1971	Jan. 25, 1971	San Francisco, CA $25,000
King Cartage Company, P.O. Box 015995, Miami, Florida; motor carrier; Sentry Indemnity Co..	June 29, 1983	Aug. 10, 1983	Miami, Florida $50,000
Larry's Cartage Co., Inc., P.O. Box 2009, Bridgeview, Ill; motor carrier; National Surety Corporation.	July 26, 1983	Aug. 19, 1983	Chicago, IL $35,000
Lone Star Co., 4447 North Central Expressway, Dallas, Texas; motor carrier; Northwestern National Casualty Co. D 08/16/83	Feb. 11, 1969	Mar. 6, 1969	Houston, TX $25,000
Miller Livestock Truck Co., Inc., Route 11, Box 224, Bakersfield, California motor carrier; Insurance Company of North America.	July 8, 1983	Sept. 1, 1983	Laredo, TX $25,000
OST Trucking Co., Inc., 320 Northpoint Road Baltimore, Maryland; motor carrier; Insurance Company of North America.	Aug. 15, 1983	Aug. 19, 1983	Washington, D.C. $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Ogden & Moffett Co., Inc.—See R-W Service System, Inc.			
R-W Service System, Inc., and its division, Ogden & Moffett Co., Inc. 20225 Goddard Road, Taylor, Michigan; motor carrier; Protective Ins. Co.. (PB 04/01/82) D 08/31/83 [6]	Apr. 27, 1983	Aug. 31, 1983	Detroit, MI $50,000
Richmond Express Co., 1201 Corbin Street, Elizabethport, New Jersey; motor carrier; Washington International Ins. Co..	Aug. 9, 1983	Aug. 18, 1983	Newark, NJ $50,000
Sea-Gal Express, Inc., Box 198, Wickatunk, New Jersey; motor carrier; Washington International Ins. Co..	July 25, 1983	Aug. 18, 1983	Newark, NJ $50,000
Sea-Trade Services, Inc., 20 South Idaho Street, Seattle, Washington; motor carrier; Insurance Company of North America.	June 29, 1983	Aug. 10, 1983	Seattle, WA $25,000
Texas Interstate Motor Express, Inc., 2410 Commerce Street, Houston, Texas; motor carrier; Peerless Ins. Co.. D 02/09/80	Feb. 20, 1976	Mar. 10, 1976	Houston, TX $25,000
Three Rivers Trucking, Inc., Legionville Road, Ambridge, Pennsylvania; motor carrier; The American Ins. Co..	Aug. 25, 1983	Aug. 25, 1983	Philadelphia, PA $25,000
Towpich Express Lines Ltd., 2840 58 Avenue SE, Calgary, Alberta, Canada; motor carrier; The Ins. Co. of North America.	July 22, 1983	Aug. 26, 1983	Great Falls, MT $25,000
Western Marine Supply, Inc., 5930—6th Avenue South, Seattle, Washington; motor carrier; The Aetna Casualty & Surety Company. (PB 02/10/76) D 08/19/83	Aug. 19, 1983	Aug. 19, 1983	Seattle, WA $25,000
Wick's Airfreight, Inc., 17609-11th Avenue, N.E., Arlington, Washington; motor carrier; Washington International Ins. Co..	Dec. 22, 1980	Dec. 22, 1980	Settle, WA $25,000
Zales Corporation, 2210 Saint Germaine Road, Dallas, Texas; motor carrier; St. Paul Fire & Marine Insurance Company. D 08/16/83	Feb. 20, 1974	Mar. 18, 1974	Houston, TX $25,000

[1] Surety is Continental Reinsurance Corp. (formerly Pacific Ins. Co.).
[2] Principal is Channel Trucking & Services, Inc.; Surety is St. Paul & Marine Ins. Co.
[3] Surety is Ins. Co. of North America.
[4] Principal is IMFS, Inc.
[5] Surety is United States Fidelity & Guaranty Co.
[6] Principal is R-W Service System, Inc./Ogden & Moffet Rainbow Express.

BON-3-03

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 83-194)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: September 9, 1983.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Air Jamaica (1968) Limited 19 East 49th Street, New York, N.Y. 10017 American Motorists Insurance Company. D10/01/83	Feb. 16, 1976	Feb. 11, 1976	New York Seaport $100,000

BON-3-01

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 83-195)

Revocation of drawback contracts

The following Treasury Decisions, providing for the payment of drawback on articles manufactured or produced in the United States by organizations named, are hereby revoked in accordance with section 22.4(r) of the Customs Regulations.

Dated: September 9, 1983.
File: DRA-1-09
216234

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

T.D.	Name of claimant
54542-N	Aerotec Industries, Inc., Aerotherm Div.
55230-H	Do.
78-380-O	American Oil and Supply Co., Inc.
81-190-B	Atlas Crankshaft Corp.
52692-E	The E. Berghausen Chemical Co.
47008-G	Brooks Piece Dye Works, Inc.
45472-I	Burnham & Morrill Co.
47755-C	Citrus World, Inc.
49091-I	Do.
49091-M	Do.
52049-A	Do.
52325-D	Do.
53568-B	Do.
54173-B	Do.
68-248-N	Do.
71-167-N	Do.
72-338-C	Do.
54077-C	Coca-Cola Bottling Co. of California
55536-I	Do.
81-301-F	Cummins Charleston, Inc.
68-210-D	Cummins Engine Co., Inc.
72-80-C	Do.
80-244-E	Do.
55755-A	E. I. du Pont de Nemours & Co.
71-201-D	Do.
71-201-E	Do.
71-201-F	Do.
71-201-G	Do.
74-221-R	Do.
75-6-K	Do.
75-71-I	Do.
75-71-J	Do.
75-71-K	Do.
75-71-N	Do.
75-115-F	Do.
75-115-G	Do.
75-115-T	Do.
75-312-D	Do.
76-24-M	Do.
76-70-I	Do.
76-282-G	Do.
76-282-H	Do.
76-282-I	Do.
76-282-J	Do.
76-282-K	Do.
76-282-N	Do.
76-282-P	Do.
76-282-Q	Do.
76-282-S	Do.
76-282-T	Do.
76-282-U	Do.
76-282-V	Do.

T.D.	Name of claimant
76-287-U	Do.
76-327-I	Do.
77-59-U	Do.
77-59-V	Do.
77-76-E	Do.
78-233-H	Do.
78-254-I	Do.
80-23-J	Do.
50878-G	Four Wheel Drive Auto Co.
51046-C	Do.
52410-J	Do.
54149-F	Do.
80-200-I	Theresa Friedman & Sons, Inc.
75-139-E	Helena Chemical Co.
54427-A	Holly Hill Fruit Products Co., Inc.
56215-F	Do.
56519-F	Do.
50655-A	Hurty-Peck & Co.
53498-A	Do.
55492-N	Ivy Steel & Wire Co.
56045-F	Do.
80-94-I	Jones & Laughlin Steel Corp. (Youngstown Sheet & Tube Co.)
80-122-N	Koehring Co.
79-129-P	The Lincoln Electric Co.
80-111-M	Lion Hydraulics, Inc.
53002-K	Marathon Electric Manufacturing Corp.
75-297-X	Mason Manufacturing Co.
50714-E	Oscar Mayer & Co., Inc.
44035-L	Merck & Co., Inc.
44417-D	Do.
45330-I	Do.
48592-L	Do.
49414-H	Do.
50033-E	Do.
51016-E	Do.
51204-A	Do.
51346-D	Do.
51445-H	Do.
51976-C	Do.
52749-C	Do.
52824-E	Do.
53365-D	Do.
53649-C	Do.
54283-C	Do.
54368-C	Do.
54525-E	Do.
54575-E	Do.
55151-C	Do.
55252-F	Do.
55401-C	Do.
55479-D	Do.
55580-H	Do.
55972-J	Do.
56060-C	Do.
56197-C	Do.
56197-D	Do.
56197-E	Do.
56197-F	Do.

413-896 O - 83 - 3

T.D.	Name of claimant
56197-G	Do.
56197-R	Do.
56436-D	Do.
56506-G	Do.
66-60-D	Do.
66-63-E	Do.
66-63-F	Do.
66-276-G	Do.
66-276-H	Do.
67-41-D	Do.
67-202-L	Do.
68-68-R	Do.
68-248-B	Do.
73-236-K	Do.
73-324-H	Do.
72-186-K	Merck Sharp & Dohme Quimca de Puerto Rico, Inc.
51194-A	National Oil Products Co.
42380-F	Nestle Co., Inc.
44417-A	Do.
45009-E	Do.
47287-J	Do.
48174-F	Do.
49009-B	Do.
49119-A	Do.
51528-C	Do.
51563-D	Do.
51925-B	Do.
52152-A	Do.
52813-E	Do.
52926-B	Do.
53036-B	Do.
53094-A	Do.
53971-C	Do.
54248-F	Do.
55601-B	Do.
56132-E	Do.
66-214-L	Do.
71-167-G	Do.
49450-A	North American Aviation, Inc.
49792-A	Do.
42530-D	Northwestern Fisheries Co.
49723-M	Northwesten Steel & Wire Co.
55223-B	Peavey Co. Flour Mills
69-74-B	Do.
73-148-X	Plywood Panels, Inc.
73-226-X	Do.
74-221-Y	Do.
74-279-Y	Do.
79-234-J	Realist, Inc.
44631-B	R. J. Reynolds Tobacco Co.
49021-B	Do.
52962-B	Do.
53656-A	Do.
68-87-V	Do.
79-260-W	Do.
42406-A	Rhodia, Inc.
42970-O	Do.
43635-V	Do.
44069-H	Do.
45688-B	Do.
49841-A	Do.
50385-D	Do.

T.D.	Name of claimant
55596–Q	Do.
55870–D	Do.
67–98–C	Do.
72–98–D	Do.
72–98–N	Do.
72–98–Y	Do.
74–221–C	Ricoh Electronics, Inc.
55722–F	Seneca Foods Corp.
53224–E	Shaw Dyeing & Finishing Co., Inc.
50482–B	Sprague Specialties Co.
79–234–P	Thyssen Metal Service/Detroit Corp.
69–246–C	United Can Co.
70–12–C	Do.
74–300–Q	U.S. Industries, Inc., Barsteel Div.
46098–D	The S.S. White Dental Manufacturing Co.
47562–I	Do.
49723–J	Do.
51853–B	Winter Garden Citrus Products Cooperative

U.S. Customs Service

General Notice

19 CFR PART 22

Advance Notice of Proposed Customs Regulations Amendments Relating to Liquidation of Drawback Claims; Extension of Time for Public Comment

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit written comments with respect to an advance notice of proposed rulemaking relating to liquidation of drawback claims filed with Customs. A document inviting the public to comment on the proposal was published in the Federal Register on July 5, 1983 (48 FR 30668). Comments were to have been received on or before September 6, 1983.

Customs has been requested to extend the comment period because of the many issues raised and the need to solicit views from members of trade associations. The requests have merit. Accordingly, the period of time for the submission of written comments is extended to October 6, 1983.

DATE: Comments must be received on or before October 6, 1983.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Betty L. Colburn, Duty Assessment Division (202-566-5307), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Dated: September 7, 1983.

JOHN P. SIMPSON,
Director,
Office of Regulations & Rulings.

[Published in the Federal Register, September 15, 1983 (48 FR 41435)]

RULES OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

Notice of Proposed Amendments to the Rules of the United States Court of International Trade

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The Advisory Committee on Rules of the United States Court of International Trade has submitted recommendations for amendment of certain rules of that Court.

ADDRESS: Written comments should be addressed to Joseph E. Lombardi, Clerk, United States Court of International Trade, One Federal Plaza, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT: Ronald W. Gerdes, Assistant Chief Counsel (Administration & Legislation), United States Customs Service, Room 3225, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2482).

SUPPLEMENTARY INFORMATION: The United States Court of International Trade has established an Advisory Committee on the Rules of that Court. The committee has made comments and recommendations concerning amendments to Rule 4 and Rule 84. Anyone interested in commenting on these Rules should do so as soon as possible. Attached as Appendix A are the recommendations for each Rule which has been submitted by the Committee.

Dated: September 13, 1983.

RONALD W. GERDES,
Assistant Chief Counsel,
(Administration & Legislation).

APPENDIX A

PROPOSED AMENDMENT TO RULE 84(A)

Suspension Calendar. A Suspension Calendar is established on which an action ~~described in 28 U.S.C. §§ 1581(a) and (b)~~ may be suspended, by order of the court, pending the final determination of a test case.

Comments of Advisory Committee on Proposed Amendment to Rule 84

The present Rule 84 provides for the suspension of cases described in 28 U.S.C. §§ 1581(a) and (b). Suspension of other cases has been sought and granted under more general authority in the Rules, *e.g.,* Rule 1(a). The proposed amendment would permit the suspension of such cases under Rule 84.

It is the view of the members of the Advisory Committee that the criteria for suspension (*see* Rule 84(c)) could be met with respect to actions other than those brought under 28 U.S.C. § 1581(a) or (b). In making this statement, the Committee does not express or suggest any opinion as to whether the vehicle of suspension should be used for non-§ 1581(a) or (b) cases. Rather, we recognize that the criteria for suspension could be met in non-§ 1581(a) or (b) cases, that suspension has already been ordered in such cases, and that the amendment to Rule 84 to permit expressly the suspension of such cases constitutes a regularization of past practice and a rational refinement of the rules.

Recommended Changes in Court of International Trade, Rule 4

Rule 4: *Service of Summons and Complaint.*

(a) *Summons—Service by the Clerk.* [No change.]

(b) *Summons and Complaint—Service by Plaintiff.* In an action to be commenced by the concurrent filing of a summons and complaint, the plaintiff shall cause service of the summons and complaint to be made by a person described in subsection (c) of this rule by the method prescribed in subdivision (d) or (g) of this rule.

(c) *Summons and Complaint—By Whom Served.* (1) In any action required to be commenced by the concurrent filing of a summons and complaint, except as provided in subparagraphs (A) and (B) of paragraph 2 of this subdivision, service of the summons and complaint shall be made by any person who is not a party and is not less than 18 years of age.

(2)(A) A summons and complaint shall, at the request of the party seeking service or such party's attorney, be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court for that purpose, only—

(i) On behalf of a party authorized to proceed in forma pauperis pursuant to Title 28, U.S.C. § 1915,

(ii) On behalf of the United States or an officer or agency of the United States, or

(iii) Pursuant to an order issued by the court stating that a United States marshal or deputy United States marshal, or a person specifically appointed for that purpose, is required to serve the summons and complaint in order that service be properly effectuated in that particular action.

(B) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule—

(i) Pursuant to the law of the State in which service is made for the service of summonses or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) By mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form —— and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under paragraph (c)(1) or under subparagraph (A) of this paragraph (2) in the manner described by subdivision (d)(1) or (d)(3).

(C) Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

(D) The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

(3) The court shall freely make special appointments to serve summonses and complaints under paragraph (2)(A) of this subdivision of this rule.

(d) *Summons and Complaint—Service Generally.* The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) [No change.]

(2) [No change.]

(3) [No change.]

(4) [No change.]

(5) Upon an officer or agency of the United States, by serving the United States and by delivering or by sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) [No change.]

(7) [Deleted.]

(e) *Return.* The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or deputy United States marshal, such person shall make affidavit thereof. If service is made under subdivision (c)(2)(B)(ii) of this rule, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

(f) *Amendment of Proof of Service.* [No change.]

(g) [Deleted.]

(h) [Redesignated as (g).]

(h) *Summons and Complaint—Time Limit for Service.* If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (g) of this rule.

Comments To Accompany Recommended Changes to Court of International Trade Rule 4

The recommended changes to Court of International Trade rule 4 ("rule 4") are motivated by two principles. According to the first principle, the rules of the Court of International Trade should parallel the Federal Rules of Civil Procedure ("FRCP") as closely as the special features of the Court's jurisdiction permit. Pursuant to this principle, the enactment into law of Pub. L. 97–462, amending FRCP 4, requires a change in rule 4 of the Court of International Trade.

The second principle is the principle which motivated the enactment into law of Pub. L. 97–462. Pursuant to this principle, service of summonses and complaints by the United States marshals should be eliminated if possible. H. Rep. No. 97–462, 97th Cong., 2d Sess. 2 (1982).

The recommended changes attempt to accommodate these two principles in the best manner possible.

In addition, the recommended changes would benefit both the private bar and the Government.

1. The private bar would benefit from the preservation of the current practice regarding service by the Clerk in certain unique types of cases within the jurisdication of the Court of International Trade. The private bar would also benefit from the provision permitting service by any non-party adult instead of a United States marshal, deputy marshal or a party authorized by state law to make service. Any problems which the private bar might encounter due to this provision can be solved through the ability to obtain a court order requiring service by a United States marshal, deputy marshal or special process server.

2. The Government would benefit from the provision which would permit it to make service by mail. It is true that some of the types of cases which the United States may institute in the Court of International Trade are serious in nature. Nevertheless, this is also true of many of the civil cases which the Government may institute in the district courts. The Congress was of the opinion that the safeguards contained in Pub. L. 97–462 relating to service by mail were sufficient to protect potential defendants even in those suits instituted by the United States in the district courts which

can have extremely important consequences for the defendant. Given this fact, there appears to be no reasons why these safeguards would not be sufficient to support the concept of service by mail in the Court of International Trade.

The various provisions contained in the recommendations are summarized below:

1. Pursuant to the recommendation, the method of service in an action which may be instituted in the Court simply by filing a summons would remain unchanged. Under the current rule, service of the summons in one of these actions is effected by the Clerk. Since the actions involved in this portion of the rule are unique to the Court and since the present rule has worked well, it was decided not to recommend a change in this portion of the rule even though the failure to change the rule could be viewed as inconsistent with the first principle noted above.

2. Recommended subparagraph (c)(1) identifies the individual who may make service and would change current practice. Currently, the summons and complaint in an action in the Court which must be instituted by the concurrent filing of a summons and complaint may be effected by the plaintiff utilizing the services of a United States marshal, a deputy United States marshal, or by some person authorized by the law of the state or place in which service is made to make service of summonses or other like process in an action brought in the courts of general jurisdiction of that state or place.

The recommended change provides that the plaintiff is to make service through the use of any non-party adult. This recommended change possesses a number of advantages. It would align rule 4 with the changes effected in the FRCP by Pub. L. 97-462. It would eliminate the need to effect service through a United States marshal. Finally, it would eliminate the need to research state law in order to determine who, in a particular case, is authorized to make service. The elimination of this latter necessity is particularly appropriate in a court of national jurisdiction.

It should be noted that, pursuant to recommended paragraph (e), proof of service is to be made by filing an affidavit with the Court.

Finally, it should be noted that a plaintiff always retains the option pursuant to recommended subparagraph (c)(2)(A)(iii) of obtaining an order from the Court appointing a special process server or providing for service by a United States marshal or a deputy United States marshal. Pursuant to recommended subparagraph (c)(3), the Court is to freely make special appointments to serve summonses and complaints pursuant to recommended subparagraph (c)(2)(A).

3. Recommended subparagraph (c)(2)(A) provides that a party who has been permitted to proceed in forma pauperis and the United States may continue to effect service through a United States marshal, a deputy marshal, or a person specially appointed

for the purpose by the Court. In addition, the recommended paragraph permits any other party to obtain a Court order providing for service by a United States marshal, a deputy marshal or a person specially appointed for the purpose. This recommendation would align rule 4 with the changes made by Pub. L. 97–462.

4. Recommended subparagraph (c)(2)(B) would authorize service of a summons and complaint upon a competent adult or a corporation by means of two different methods.

The first method would authorize service in the manner authorized by the law of the state in which service is made. This change is in accord with the change effected by Pub. L. 97–462.

The second method of effecting service permits service by first-class mail, postage prepaid. The use of the first-class mail represents a change in current practice which requires use of registered or certified mail, return receipt requested. This change is in accord with a change effected by Pub. L. 97–462 which rejected the use of registered or certified mail due to the problems encountered in the use of registered or certified mail in effecting service upon private parties. H. Rep. No. 97–662, 97th Cong., 2d Sess. 3 (1982).

It should be noted that, in accordance with a change effected by Pub. L. 97–462, the use of registered or certified mail would continue to be required when effecting service by mail upon an officer or agency of the United States.

Service by mail, as permitted by recommended subparagraph B(ii), would require the person served to acknowledge service within 20 days by returning a form to the sender. The form and the rule (recommended subparagraph (b)(2)(D)) require the acknowledgment of service to be executed under oath or affirmation. Pursuant to recommended paragraph (e), the acknowledgment of service is to be filed with the Court as proof of service.

If a party does not return the acknowledgment of service within 20 days, service is to be made by a non-party adult by the method prescribed by subparagraphs (d)(1) or (d)(3) of rule 4 or by obtaining an order of the Court pursuant to recommended subparagraph (c)(2)(A). If service is effected in one of these two latter ways because the party served fails to return the acknowledgment of service by mail, the costs of personal service may be assessed, unless good cause is shown, against him or her.

5. Recommended paragraph (h) would effect a change in current practice by requiring service to be effected within 120 days of the filing of the complaint. The current rule contains no time period within which service must be made. The recommendation is in accord with a change effected by Pub. L. 97–462. See H. Rep. No. 97–662, 97th Cong., 2d Sess. 3–4 (1982).

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 83-91)

NATIONAL PRESTO INDUSTRIES, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 77-12-04907

Before FORD, *Judge.*

Food Lifters

Certain articles composed of base metal and used with a deep fryer to place food in the fat or remove it were classified as spoons under the provisions of 650.56, Tariff Schedules of the United States, *held* entitled to entry free of duty under the provisions of item A651.47, TSUS, by virtue of the Generalized System of Preferences.

The term spoon was the subject of litigation in *Aluminum Housewares Co., Inc.* v. *United States*, 81 Cust. Ct. 24, C.D. 4760 (1978) and therefore the common meaning of the term has been determined. The involved merchandise does not meet the specifications of the definition adopted by the court.

[Judgment for plaintiff.]

(Decided September 2, 1983)

Stein, Shostak, Shostak & O'Hara (Joseph P. Cox at the trial and on the brief and *S. Richard Shostak* on the brief) for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Susan Handler-Menahem* at the trial and on the brief), for the defendant.

FORD, *Judge:* The merchandise covered by this action, described on the invoices as "Steel Food Lifters", was classified by Customs as spoons under the provisions of Item 650.56 TSUS and accordingly assessed with duty at 17 percent ad valorem. Plaintiff contends and defendant agrees that, if the Court finds the imported articles are not spoons, said merchandise is entitled to entry free of duty under item A651.47 TSUS by virtue of the Generalized System of Preferences, Pub. L. 93–618 and Executive Order 11888 (November 25, 1975) as claimed. Defendant has conceded that plaintiff has met all requirements for GSP treatment.

In view of the foregoing and plaintiff's withdrawal of its alternative claim under the provisions of Item A648.51 TSUS, said claim is dismissed. By virtue of the stipulation referred to above and the pleadings the sole issue presented for determination by the Court is whether the imported articles are spoons.

The pertinent statutory provisions involved read as follows:

	Forks, spoons, and ladles, all the foregoing which are kitchen or table ware, with or without their handles:	
*	* * * * * * *	
650.56	Spoons and ladles: With base metal (except stainless steel) or nonmetal handles	17% ad val.

Hand tools (including table, kitchen, and household implements of the character of hand tools) not specially provided for, and metal parts thereof:

* * * * * * *

A651.47	Other * * *.	* * *
	Table, kitchen, and household implements	

This action was submitted to the court on a record consisting of the testimony of four witnesses called on behalf of plaintiff and one called by defendant. In addition, there were received on behalf of plaintiff six exhibits. Defendant offered and there were received in evidence five exhibits. The official papers were received in evidence without being marked.

Plaintiff called as its first witness Mr. Ron Oakland, a senior vice president and creative director of the advertising agency handling plaintiff's products. Mr. Oakland testified he has been active in the food industry for thirty-five years and was fully familiar with the marketing of food and kitchen utensils, including the imported merchandise for the past eight years. Exhibit 1 was identified by the witness as representative of the imported merchandise. Exhibit 2, a catalog sheet, was prepared under the witness' direction in early 1976 and refers to the imported article as a scoop. The witness testified that when the involved article was first introduced there had been other catalog or instructional booklets which referred to the item as a spoon. However, since Mr. Oakland felt the term spoon was not descriptive of the imported article, the term was discontinued without knowledge of, and prior to, any controversy which later arose with the Customs Service. Since early 1976 the imported article has been described as a scoop.

The witness identified Exhibits 3A through 3G as sales promotional material, all of which had been prepared under his direction during 1976 and early 1977. These articles were prepared for the purpose of showing the benefits and reasons for the design of the scoop.

The definition of the term spoon from *Webster's Third New International Dictionary of the English Language* (1963), page 2205, *infra*, cited in *Aluminum Housewares Co. Inc.* v. *United States*, 81 Cust. Ct. 24, C.D. 4760 (1978), was read to Mr. Oakland, who agreed that it applied to slotted spoons, but not to the merchandise involved herein. The witness identified plaintiff's Exhibit 4, the Ekco Kitchamajig, which is basically the same as plaintiff's Exhibit 1, and which he would consider to be a gadget or hand tool in the trade, but certainly not a spoon.

Ms. Carol Peterson was then called on behalf of plaintiff. The witness is a graduate of Oregon State University, with a Bachelor of Science degree in food and nutrition, and has been a food writer for *Sunset Magazine.* The witness has also been a food consultant for over eighteen years, as well as serving as a food writer and food stylist. Ms. Peterson had also taken cooking courses under James Beard, the well known authority on cookery and the author of a number of cookbooks.

Ms. Peterson testified she was familiar with the use of plaintiff's Exhibit 1 and its deep fryers. Exhibit 1 is used to lower food into fat to be deep fried. It is also used to turn and to remove the cooked items from the hot fat. According to the witness, the handle must be long enough so the user does not get splattered by the hot fat. Exhibit 1 is a hybrid utensil which she called a food lifter or skimmer. According to the witness, Exhibit 1 is not a slotted spoon, since it does not have a round or oval bowl, which is characteristic of a spoon. If Exhibit 1 had an oval shape it might be considered a spoon, except she had never seen a looped handle on a spoon. Ms. Peterson did not see any substantial difference between Exhibits 1 and 4. In her opinion, Exhibit 4 was not a spoon since it does not meet the qualifications of the definition of a spoon. She testified that there are spoons utilized for special purposes, such as grapefruit spoons, measuring spoons, sugar spoons, etc. The witness was of the opinion that Exhibit 1 resembled a skimmer, although skimmers generally do not have slots but have holes or are made of mesh. A skimmer is used to remove cooked articles from hot fat or smaller pieces that have broken off and floated to the surface.

While Ms. Peterson was not familiar with defendant's Exhibit C, a nylon slotted spoon, she indicated that it could not be used in hot fat since it would melt, whereas Exhibits 1 and 4 could be so used. The witness further testified that if Exhibit C were made of metal it could not be used in the same manner as Exhibit 1 since it would be unsafe due to the fact that the bowl was so narrow that one would run the risk of having articles fall off and burn the user with the hot oil.

Mr. Sandy Rosenholz, a manufacturer's representative for Pet Accessories and Supplies, was called on behalf of plaintiff. He identified plaintiff's Exhibits 5 and 6 as a plastic cat litter scoop, similar to a metal litter scoop which his company manufactures. He testified that in the pet industry Exhibits 5 and 6 were called cat litter scoops or just scoops. The witness agreed with the *Webster's* Dictionary definition contained in *Aluminum Housewares Co. Inc.,* infra.

The final witness called on behalf of plaintiff was Ms. Judythe Daria Roberts, who testified that she had run a gourmet school of cooking and entertaining for ten years. In addition the witness has also given cooking demonstrations and led cooking tour groups to

France, Italy and China. An article about her had been featured in *Bon Appetit* Magazine.

Ms. Roberts was familiar with Exhibit 1, having used such an item and instructed her students in the use of said item to lift fried foods from a deep fat fryer. In her opinion Exhibit 1 is a strainer or scoop. Articles such as Exhibit 4 are strainers or all-purpose tools, but not a spoon. A strainer takes solid particles of food out of liquid and allows the water or fat to drain from the food. The witness agreed with the definition contained in *Aluminum Housewares, infra,* and was of the opinion that Exhibit 1 did not meet the definition. According to the witness a spoon could not be used with a fryer because a spoon has a bowl and would lift out hot fat with the food. In addition, according to the witness, spoons do not have looped handles such as Exhibit 1, which generally keep the handle from getting overly hot as it would with a solid handle. Exhibit 1 would not be considered a slotted spoon since a slotted spoon has a bowl with small holes and a solid handle, all of which make it inappropriate for deep fat frying.

On cross-examination Ms. Roberts was read the definition from *Funk & Wagnall's New Standard Dictionary,* also cited in *Aluminum Housewares, infra.* The witness testified that Exhibit 1 does not have a deep bowl and that scoops generally do not have slots. In addition, Ms. Roberts stated that if Exhibit 1 had a wood or plastic handle it would be extremely dangerous to use in deep fat since the wood would tend to burn and the plastic would tend to melt.

The sole witness called by defendant was Mr. Michael Pettite, a chief instructor and head of the Food Services Program at Pasadena City College since 1975. The definition from *Webster's Third New International Dictionary,* cited in *Aluminum Housewares, infra,* was read to the witness, and he agreed with the definition. He was familiar with the term slotted spoon, having observed them for sale in various stores and having used them at the college and at home. Slotted spoons, such as Exhibits C, D and E have shallow round or oval bowls with slots and can be used to lift food out of stocks or fryers or to mix, blend or prepare food. The witness in his opinion believed Exhibit 1 to be a slotted spoon. According to the witness a plastic handle would not melt as it would not be sitting in the liquid or fat for a long period of time. The witness indicated a plastic handle is not as likely to conduct heat.

Ms. Peterson was recalled and testified that Exhibit C would be inadequate to use in hot oil for several reasons. A utensil composed in part of nylon would melt in hot fat. The witness further testified that if left to lean against the side of the pan the handle would burn. In addition since the bowl is so small it would be dangerous to use in deep frying. She then pointed out that the metal looped handle of Exhibit 1 would not conduct heat as would the solid metal handle of Exhibit C.

Based upon the record as made and the pleadings filed herein, there is no dispute that the imported article is a hand tool which is chiefly used in the household or kitchen and is composed of a base metal. It is elementary in the field of Customs Jurisprudence that tariff terms are to be construed in accordance with their common meaning and commercial meaning which are presumed to be the same. *Ozen Sound Devices* v. *The United States*, 67 CCPA 67, C.A.D. 1246, 620 F.2d 880 (1980); *S.G.B. Steel Scaffolding and Shoring Co., Inc.* v. *United States*, 82 Cust. Ct. 197, C.D. 4802 (1979); *Continental Manufacturing Co., et al.* v. *United States*, 82 Cust. Ct. 187, C.D. 4800 (1979).

Neither party has attempted to establish a commercial designation which differs from the ordinary understanding of the term. Hence, the common meaning of the tariff term would apply. The common meaning of a tariff term is not a question of fact but one of law to be determined by the court, which may consult dictionaries, lexicons, etc. as an aide to its knowledge. See *Sturm, Customs Law and Administration,* § 52.6 (1983 edition). The testimony of witnesses as to the common meaning may be considered, but is merely advisory. *United States* v. *National Carloading Corp., et al.,* 48 CCPA 70, C.A.D. 767 (1961); *United States* v. *O. Brager Larsen,* 36 CCPA 1, C.A.D. 388 (1948).

The term spoon was the subject of litigation in *Aluminum Housewares Co. Inc.* v. *United States*, 81 Cust. Ct. 24, C.D. 4760 (1978). The merchandise involved therein was measuring spoons, which the court held to fall within the meaning of the term spoons in 650.56, and in which the court cited the following definitions:

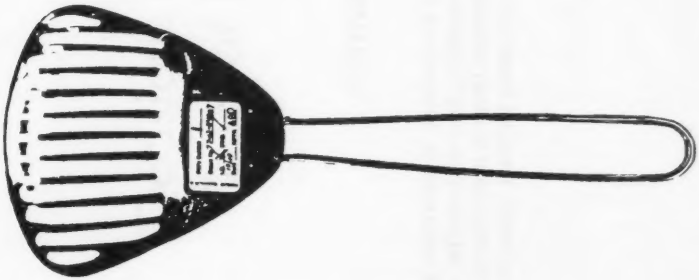
> *Webster's Third New International Dictionary of the English Language,* p. 2205 (1966) defines a "spoon" as:
>
> [A] usu. metal, plastic, or wooden eating or cooking implement consisting of a small oval or round shallow bowl with a handle—often used in combination [e.g., teaspoon]
>
> and *Funk & Wagnalls New Standard Dictionary of the English Language,* p. 2349 (1956) defines the term "spoon" as:
>
> A utensil having a shallow ovoid bowl and a handle, used in preparing, serving, or eating food.
>
> As employed in item 650.56, the term "spoons" is qualified, among other things, by the phrase "which are kitchen or table ware". *Webster's Third New International Dictionary of the English Language,* p. 1247 (1966) defines "kitchenware" as "hardware (as cutlery and cooking utensils) for kitchen use."

The Court further observed the term is palpably broad and stated:

> The common meaning of the term "spoon" is palpably broad, encompassing many articles whose identification as such is invariably qualified by reference to some specific function performed. Thus, a teaspoon is so named because it is used to stir

> sugar in tea. The same can be said with respect to *slotted* spoons, *mixing* spoons, *stirring* spoons, *mustard* spoons, *table*-spoons, *dessert* spoons, *grapefruit* spoons, *fruit* spoons, *sugar* spoons, *relish* spoons, *soup* spoons, *serving* spoons, *salad* spoons. And by the same token *measuring* spoons are so named because of their specific function of apportioning exact quantities. In fact, a mere reference to the term "spoon" without a prefix denoting function is meaningless in terms of identifying any particular kind of spoon. Obviously, therefore, variation in function between spoons cannot be the basis for denominating one article a spoon and another not a spoon, as plaintiff seems inclined to do. [P. 28.]

In view of the fact that the court has already determined the common meaning of the term spoon, the question presented herein is whether the imported article falls within the term. It is obvious that in *Aluminum Housewares* the measuring spoons fall within the definition. As I discern the common meaning of a spoon, it must be a utensil or implement (1) with a small or shallow bowl, (2) which is ovoid or round, (3) has a handle, and (4) is used for eating, cooking or preparing food. While the imported article may be utilized in preparing food or as a cooking implement, it is not used for eating. The court is of the opinion that the imported article does not meet the specifications of the definition heretofore adopted by the court and agreed to by all the witnesses in the instant case. The so-called lifter involved herein is not oval or round in shape but has a triangular shape approximately 4 inches wide as indicated below.



Defendant's attempt to relegate the involved item to a slotted spoon category, as indicated by defendant's exhibits C, D, and E, is to no avail. The above exhibits meet the specifications of having shallow round or oval bowls and are used for eating, preparing food, or cooking, whereas the involved merchandise conforms only in part to the specifications set forth.

In the field of Customs Jurisprudence it has often been stated that a sample is a potent witness. *Marshall Field & Co.* v. *United States,* 45 CCPA 72, C.A.D. 676 (1958). Based upon ocular inspection of Exhibit 1 together with the record the court is satisfied that the imported merchandise is not a spoon as set forth in *Aluminum Housewares, supra.*

In conjunction with the fact that the court is of the opinion that the imported merchandise is not a spoon, defendant's answer to the first amended complaint admits the articles involved have base metal handles, are hand tools, are household and kitchen utensils. In addition the further admission that plaintiff has met all statutory requirements for GSP treatment, establishes plaintiff's claim (see Answer, paragraphs 6 to 8 and 11 to 15).

In view of the foregoing the claim of plaintiff for entry free of duty under Item A651.47, TSUS, is sustained. All other claims are overruled.

Judgment will be entered accordingly.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *September 8, 1983.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary here given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/261	Re, C.J. September 6, 1983	E. Gluck Corp.	81-11-01595	Item 715.05 Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.35 Various rates (bands)	Item 688.35 5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "A") Item 656.25 25%, 23.1%, 21.3% or 19.4% (merchandise marked "B" plated with gold) Item 657.35 .6¢ per lb. + 7.5%, 7.4%, 7% or 6.7% (merchandise marked "B" brass c.v.) Item 657.20 9.5%, 9%, 8.6% or 8.1% (merchandise marked "B" steel c.v.) Item 656.20 16%, 14.9%, 13.9% or 12.8% (merchandise marked "B" coated or plated with palladium)	Agreed statement of facts	New York Electronic LCD watches consisting of modules; modules and cases, etc. (merchandise marked "A"); cases and bands (merchandise marked "B"); entireties
P83/263	Re, C.J. September 6, 1983	U.S. JVC Corporation	81-9-01209	Not stated	Item 685.40 5.5% or 5.3%	Judgment on the pleadings	Los Angeles Video cassette recorders; entirety with incorporated timer devices
P83/264	Re, C.J. September 6, 1983	U.S. JVC Corporation	82-3-00433	Not stated	Item 685.40 5.1%	Judgment on the pleadings	Chicago Video cassette recorders; entirety with incorporated timer devices

P83/265	Ford, J. September 6, 1983	F.W. Myers & Co., Inc.	82-8-01139	Item 680.22 11%	Item 666.00 Free of duty	Agreed statement of facts	Buffalo Automatic livestock waterers
P83/266	Ford, J. September 6, 1983	Uniroyal, Inc.	83-1-00083	Item 680.12 5.5%	Item 678.10 Free of duty	Converse Rubber v. U.S. (C.D. 4374)	Bridgeport (Boston) Shoe machinery molds
P83/267	Re, C.J. September 6, 1983	Alleson Corporation	82-4-00522	Item 389.62 15% + 25¢ per lb.	Item 389.70 10%	Agreed statement of facts	New York "Lashing cable" style Nos. 9344, 9330, 9343 and 9306
P83/268	Re, C.J. September 6, 1983	J.C. Penney Purchasing Corporation	81-4-00464	Item A737.95 17.5%	Item A737.15 Free of duty (vehicle) Item A685.60 Free of duty (Transmitter)	Agreed statement of facts	Savannah Radio controlled white Porsche and Radio controlled black Porsche

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/601	Re, C.J. September 6, 1983	Mitsubishi International Corp.	82-10-01376	Export value	Dutiable at value calculated in accordance with C.I.E. 38/81 of 10/18/81, and C.I.E. 30/81 of 7/20/81	Agreed statement of facts	New York Polyester fabrics and/or yarns
R83/602	Re, C.J. September 7, 1983	J.C. Penney Purchasing Corporation	81-8-01114	American selling price	Appraised at $7.00 per pair, less 2% net packed	Agreed statement of facts	Norfolk Men's and boys' nylon and vinyl suede jogger oxfords
R83/603	Re, C.J. September 7, 1983	Perkin Elmer Corporation	80-7-01040	Export value	Invoice unit prices, net, packed or invoice unit prices plus percentages or additions for packing representing the correct dutiable value. Said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Various electrical instruments and accessories

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/604	Re, C.J. September 7, 1983	Perkin Elmer Corporation	80-7-01043	Export value	Invoice unit prices, net, packed or invoice unit prices plus percentages or additions for packing representing the correct dutiable value. Said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Various electrical instruments and accessories
R83/605	Re, C.J. September 7, 1983	Perkin Elmer Corporation	80-10-01863	Export value	Invoice unit prices, net, packed or invoice unit prices plus percentages or additions for packing representing the correct dutiable value. Said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Various electrical instruments and accessories
R83/606	Re, C.J. September 7, 1983	Perkin Elmer Corporation	80-10-01864	Export value	Invoice unit prices, net, packed or invoice unit prices plus percentages or additions for packing representing the correct dutiable value. Said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Various electrical instruments and accessories
R83/607	Re, C.J. September 7, 1983	Perkin Elmer Corporation	80-10-01865	Export value	Invoice unit prices, net, packed or invoice unit prices plus percentages or additions for packing representing the correct dutiable value. Said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Various electrical instruments and accessories

R83/608	Re, C.J. September 7, 1983	Perkin Elmer Corporation	81-5-00625	Export value	Invoice unit prices, net, packed or invoice unit prices plus percentages or additions for packing representing the correct dutiable value. Said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Various electrical instruments and accessories
R83/609	Re, C.J. September 7, 1983	Perkin Elmer Corporation	81-5-00626	Export value	Invoice unit prices, net, packed or invoice unit prices plus percentages or additions for packing representing the correct dutiable value. Said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Various electrical instruments and accessories
R83/610	Re, C.J. September 7, 1983	Perkin Elmer Corporation	81-10-01381	Export value	Invoice unit prices, net, packed or invoice unit prices plus percentages or additions for packing representing the correct dutiable value. Said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Various electrical instruments and accessories

Index

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